IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 782l of 2004

Smt Rekha H Varatha ..Petitioner
vs
Gopal Permanand Patil and ors.. Respondents

Mr Rajiv Patil with S D Patil for petitioner
Mr.V.P.Malvankar AGP for State
Mr.Ashok Paranjape for Wadia Gandy & Co. for respondent nos.l to 5

CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated 3.ll.2004

P.C:

Heard advocates.

l. By this petition petitioner seek to challenge the order of the Commissioner Konkan Division confirming the order passed by the Collector of Thane granting NA permission to the respondent nos.l to 5. The petitioner claims that her deceased husband was tenant of Gat No.57/2 and Mutation Entry bearing No.257 showing her deceased husband as tenant was duly certified. Further it is the case of the petitioner that after the death of her husband she is in possession of the land and her name has been entered in 7 x l2 extracts. She claims that she is a tribal and, therefore, protected under the provisions of Maharashtra

Restoration of Land to Scheduled Tribes,Act, l974. According to the petitioner the decision rendered by the Commissioner virtually deprived the petitioner of the protection of a social welfare legislation.

2. The Commissioner has recorded a finding that the petitioner's late husband was granted only 5 gunthas of land out of Gat No. 57/2 and the remaining land was in possession of respondent nos. l to 5. The Commissioner has also noted that the respondent nos.l to 5 were declared as deemed purchasers and were granted certificates under section 32M of the Bombay Tenancy and Agricultural Lands Act, l948. It is further case of the respondent nos.l to 5 that the petitioner's husband had made a statement in the proceedings under the provisions of ULC Act that he has no concern with the said land except the area of 5 gunthas.

3. By the impugned order under the Maharashtra Land Revenue Code NA permission has been granted to the petitioner. The issue of title cannot be decided in the proceedings under the Mah Land Revenue Code. Therefore we grant liberty to the petitioner to adopt appropriate proceedings in accordance with law to establish her right in

respect of the disputed land. It is needless to say that the observations made by the Commissioner in his order are only prima facie and tentative observations and will not preclude the petitioner from pursuing her remedy as per law.

All contentions on merit are left open to the parties.

Petition is disposed of accordingly.